



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

August 9, 1993
AO-93-16

Lois Di Giacomandrea
25 Langdon St.
Roxbury, MA 02119-2737

RE: Public Employee Seeking Elected Office

Dear Ms. Di Giacomandrea:

This letter is in response to your April 6, 1993, letter requesting an advisory opinion as to whether a municipal employee may run for elected office without taking a leave of absence.

You also ask what forms are necessary for holding fundraisers and registering your committee. I will answer each question in order.

Section 13 of M.G.L. c.55 states:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees. The soliciting or receiving of any gift, payment, contribution, assessment, subscription or promise of money or other thing of value by non-elected political committee organized to promote the candidacy for public office of a person so employed for compensation by the commonwealth or any county, city or town, shall not be deemed to be a direct or indirect solicitation or receipt of such contribution by such person; provided, however, that no such gift, payment, contribution, assessment, subscription or promise of money or other thing of value may be solicited or received on behalf of such a person from any person or combination of persons if such person so employed knows or has reason to know that the person or combination of persons has an interest in any particular matter in which the person so employed participates or has participated in the course of such employment or which is the subject of his official responsibility.

No provision of M.G.L. c.55, including section 13, mandates that a person employed for compensation by the commonwealth or one of its subdivisions, a so-called "public employee," relinquish his or her employment with the commonwealth or any of its subdivisions in order to seek elected office. Such an employee, however, may not solicit political contributions directly or indirectly, in person or in writing, while so employed.

This Office has advised on numerous occasions that public employees wishing to participate in campaign fundraising activities are exempt from the prohibitions against political solicitation set forth in section 13 if they take an unpaid leave of absence at least four months before a primary election or at least six months prior to a general election. Upon taking such a leave of absence a public employee would be allowed to participate in fundraising activities. See AO-92-07 and advisory opinions cited therein for further information addressing these issues.¹ For your information, I have also enclosed this Office's publication "A Guide to Political Activity for State, County and Municipal Employees".

Therefore, a public employee may run for public elected office without taking a leave of absence, however, such an employee may not engage in any fundraising activities without taking such a leave as described above.

There are several other sections of M.G.L. c.55 which I would alert you to as a public employee. Section 15 of M.G.L. c.55 states:

No officer, clerk or other person in the service² of the commonwealth or of any county, city or town shall, directly or indirectly, give or deliver to an officer, clerk or person in said service, or to any councillor, member of the general court, alderman, councilman or commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever.

Section 14 of M.G.L. c.55 states: "No person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for the purposes set forth in section thirteen."

1. Since the issues you present also raise questions relating to the conflict-of-interest law, M.G.L. c.268A, I suggest that you also consult the State Ethics Commission on this matter. In addition, you should discuss this matter with your employer since that agency may have its own restrictions or regulations regarding this type of activity.

2. I note that a so-called "person in the service," which includes both paid and unpaid persons serving the commonwealth or any of its subdivision, is also not subject to section 15 if such a person takes a leave of absence, without pay if applicable, as described above.

Section 16 of M.G.L. c.55 states: "No person in the public service shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so."

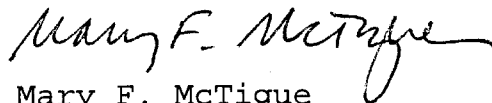
Section 17 of M.G.L. c.55 states: "No officer or employee of the commonwealth or of any county, city or town shall discharge, promote, or degrade an officer or employee, or change his official rank or compensation, or promise or threaten so to do, for giving, withholding or neglecting to make a contribution of money or other valuable thing for a political purpose."

In addition to your substantive question, you have also asked what particular forms, if any, must be filed prior to holding a fundraiser. Prior to any fundraising or other campaign finance activity being undertaken by a political committee at the municipal level, the political committee must organize, appoint a chairman and treasurer and file a Statement of Organization, Form CPF-M101, with the municipal clerk. No specific forms have to be filed with the clerk at the time of a particular fundraiser, however, all expenditures and contributions including in-kind contributions relative to any fundraising or other campaign finance activity must be reported for the relevant period in the committee's or candidate's pre-primary, pre-election and year end reports. In addition, detailed records of all contributions and expenditures regarding all campaign finance activity must be kept by the committee. See M.G.L. c.55, ss.2 and 5.

For your information, I have enclosed a copy of this Office's "Campaign Finance Guide for Candidates for Municipal Office." Your municipal clerk should have all the necessary forms and be able to provide you with additional information regarding the specific filing deadlines and requirements for elections in your community.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55. Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,



Mary F. McTigue
Director

Enclosures
cc: Municipal Clerk